

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MIKE PLAZONY,

Plaintiff,

v.

DESTINY HEALTH, INC.,

Defendant.

FILED: MAY 8, 2008

08CV2672 EDA

JUDGE ST. EVE

No. MAGISTRATE JUDGE KEYS

Jury Trial Requested

COMPLAINT

NOW COMES Plaintiff, MIKE PLAZONY, by and through his counsel, LISA KANE & ASSOCIATES, P.C., and complaining of Defendant, DESTINY HEALTH, INC., states as follows:

PRELIMINARY STATEMENT

1. This is an action seeking redress for Defendant's breach of Plaintiff's employment contract in violation of rights guaranteed to Plaintiff under the laws of the State of Illinois. Plaintiff seeks compensatory damages, restitution, and consequential damages.

JURISDICTION

2. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332, as this is a dispute between citizens of different States and the amount in controversy exceeds \$75,000.

VENUE

3. Venue in this District is proper pursuant to 28 U.S.C. § 1391 (a) because a substantial part of the events or omissions giving rise to the claims raised herein occurred in this District.

PARTIES

4. Plaintiff, MIKE PLAZONY, is a citizen and resident of the State of Illinois.

5. Defendant, DESTINY HEALTH, INC., is a corporation organized under the laws of the State of Delaware.

COUNT I – BREACH OF CONTRACT

6. Plaintiff incorporates by reference paragraphs one (1) through five (5) above as if fully alleged herein.

7. In June 2006, in a letter offering Plaintiff the position of Vice President, Defendant drafted a contract containing the following clause:

“In the event Destiny Health has a change in control and the company terminates your employment for reasons other than willful malfeasance, you shall be entitled to severance pay equal to six months of your current base salary plus fifty percent (50%) of the bonus paid to you for the most recently completed calendar year. For purposes hereof, a “change in control” of the Company shall be deemed to have occurred if: (i) there shall be consummated any consolidation or merger of the Company in which the Company is not the continuing or surviving corporation or pursuant to which Shares of the Company’s common stock would be converted into cash, securities or other property, other than a merger of the Company in which the holders of the Company’s common stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger; (ii) Discovery Holdings Limited shall cease to own more than fifty percent (50%) of the issued and outstanding Shares; (iii) there shall be consummated any lease, exchange or other transfer (excluding transfer by way of pledge or hypothecation), in one transaction or a series of related transactions, of all, or substantially all, of the assets of the Company; or (iv) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company. The Company shall take such action as may be necessary to enable the Optionee to receive, upon any subsequent exercise of the Option, in whole or in part, in lieu of Shares, securities or other assets as were issuable or payable upon such change in control.

8. Plaintiff accepted the contract and in July 2006 began employment with Defendant in the position of Vice President, Individual Markets of Destiny Health, Inc.

9. Throughout his tenure with Defendant, Plaintiff has performed to Defendant’s reasonable satisfaction at any times material hereto, as evidenced by, without limitation, Plaintiff’s merit-based bonuses.

10. In February 2008, Defendant announced that it would quit the U.S. retail insurance

market and sell the group health insurance business to a major U.S.-based insurance company. In divesting its health insurance products, Defendant began a new strategic course to focus on enhancing and delivering its Vitality program.

11. As part of the change in operations, Defendant initiated a plan to transfer all or substantially all of its assets to another entity.

12. In a meeting on February 27, 2008 with Art Carlos, Chief Executive Officer, Defendant informed Plaintiff that due to the change in operations his employment would be terminated effective April 30, 2008.

13. Defendant's decision to exit the U.S. retail insurance market and transfer the group health insurance business to another insurance company is a change of control as defined by the contract between Plaintiff and Defendant, entitling Plaintiff to severance pay equal to six months of his current base salary plus fifty percent (50%) of the bonus paid to him for the 2007 calendar year.

14. Despite its contractual requirements, Defendant has only offered Plaintiff three (3) weeks severance pay, thereby breaching the terms and conditions of the June 2006 agreement.

15. Defendant's acts and omissions constitute a breach of contract, in violation of the laws of the State of Illinois.

16. As a direct and proximate result of Defendant's breach, Plaintiff has suffered and continues to suffer substantial financial harm, resulting in substantial damages exceeding \$75,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, MIKE PLAZONY, prays for judgment against Defendant and respectfully requests that this Court:

- A. Grant a permanent injunction restraining Defendant, its officers, administrators, successors, assigns, and all persons in active concert or participation with them, from engaging in any employment practice that unlawfully breaches its contractual obligations and retain unjust enrichment from such means;
- B. Order Defendant to make whole Plaintiff by providing the affirmative equitable relief necessary to eradicate the effects of Defendant's unlawful practices, including, but not limited to, compensatory damages, restitution, and consequential damages;
- C. Grant Plaintiff his attorney's fees, costs, and disbursements; and
- D. Grant Plaintiff such further relief as the Court deems equitable, just, proper, and necessary in the public interest.

JURY TRIAL DEMAND

17. Plaintiff requests a jury trial on all issues of fact and law raised by the allegations this complaint.

Respectfully submitted,
MIKE PLAZONY, Plaintiff

By: s/Lisa Kane
Lisa Kane, Attorney for Plaintiff

LISA KANE & ASSOCIATES
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Verification

I, MIKE PLAZONY, declare under penalty of perjury that the foregoing is true and correct.

Executed on May 6, 2008.



MIKE PLAZONY